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TRANSMITTAL FORM

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Filing Date	March 10, 1998
First Named Inventor	Satoru MOTOYAMA
Art Unit	2141
Examiner Name	Stephan F. Willett
Attorney Docket Number	393032003100

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ENCLOSURES (*Check all that apply*)

- [ ] Fee Transmittal Form
- [ ] Fee Attached
- [ ] Amendment/Reply
- [ ] After Final
- [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
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- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
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- [ ] CD, Number of CD(s) _____
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- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [x] Appeal Communication to TC (Appeal Notice, Brief, **Reply Brief**)
- [ ] Proprietary Information
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

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Date	January 13, 2006	Reg. No.	48,231

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV781674003 5US, in an envelope addressed to: MS Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: January 13, 2006 Signature: _____ (Marco Jimenez)

Docket No.: 393032003100
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Satoru MOTOYAMA

Application No.: 09/037,822 Confirmation No.: 7579

Filed: March 10, 1998 Art Unit: 2141

For: TEMPORARY STORAGE OF COMMUNICATION DATA Examiner: Stephan F. Willett

REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Examiner's Answer mailed on November 16, 2005, Applicant herewith submits a Reply Brief within two months of the mailing date of the Examiner's Answer as required under 37 C.F.R. § 41.41(a).

This brief contains items under the following headings as required by M.P.E.P. § 1208:

I. Status of Claims
II. Grounds of Rejection to be Reviewed on Appeal
III. Argument

I. STATUS OF CLAIMS

A. Current Status Of Claims

1. Claims canceled: 1-28, 30-32, 34-36, 38-40, 48, 49 and 51

2. Claims withdrawn from consideration but not canceled: none

3. Claims pending: 29, 33, 37, 41-47, 50 and 52

4. Claims allowed: 29, 33, 37, 47, 50 and 52

5. Claims rejected: 41-46

B. Claims On Appeal

The claims on appeal are claims 41-46.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 41-46 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Moline et al. (U.S. Patent No. 5,883,957) in view of Shioda (U.S. Patent No. 5,430,243). Claims 41-46 are rejected under § 103(a) as being unpatentable over Moline in view of Isozaki (U.S. Patent No. 5,999,905).

Claim 41 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner has withdrawn this rejection in his Answer.

III. ARGUMENT

A. The Examiner's Answer fails to establish that the cited references disclose setting the time of an apparatus as defined in the claims.

Applicant respectfully submits that the Examiner's Answer has failed to establish that the cited references disclose setting the time of an apparatus as defined in the claims.[1] The apparatus receives time information of the first received music data and rectifies the time information (e.g., subtracts a given value). The rectified time information is used to set the time of the apparatus. This means that the time or clock of the apparatus, that periodically counts up, is adjusted. Because in this example the time or clock of the apparatus has been set back by a given value, the time or clock of the apparatus periodically counts up to the time of the first received data. The apparatus continues to buffer received data while its time or clock is counting up. Once the counted up time reaches the time of the first received data, processing begins and proceeds smoothly in view of the recently buffered data.

There is no disclosure or suggestion in Moline that the receiver's system time, which is counted up periodically, is set based on the received time data. The reception process of Moline begins by first determining a "server start time." (See Col. 13, lines 7-34.) This is the system time when the buffer is created to store the received MIDI data. It is a specific point in time. A delay time (which can be chosen by the user) is added to the server start time to obtain a "play start time." The "play start time" is a specific point in time as well.

Moline then discloses a calculation that is performed by the receiver to determine when to begin play. Specifically, the time stamp of a received MIDI data is added to the "server start time" to determine if the sum is equal to or greater than the "play start time." This calculation is repeatedly performed for each received MIDI data. When the sum of the "server start time" and the

[1] Claim 41 recites that the controlling device "rectifies said first time information by a predetermined value and sets the rectified time information as the second time information for the music data processing apparatus" and the processor "counts up the second time information periodically and processes the stored music data in accordance with said

time stamp of the most recently received MIDI data is equal to or greater than the "play start time," the receiver begins to play.

Throughout this process, the system time of the receiver (see Col. 13, line 9) marches forward unaffected. There is no disclosure or suggestion in Moline that this system time is adjusted by the received data in any way. All that is disclosed is that the received time stamps are applied to two specific points in time – the "server start time" and the "play start time" – to determine when to begin play. The "server start time" and the "play start time" cannot be considered the system time of the receiver, because they are specific points in time and are not counted up periodically. In contrast, in the present invention, the time or clock of the apparatus that is counted up periodically is set by the time information of the first received music data.

In paragraph 15 of the Answer, the Examiner states that "the delay time/time stamp [of Moline] is also sent to the receiver and these times are used to arguably 'set the time of the receiver.'" The only use of the "server start time," the "play start time" (which includes the delay time) and the received time stamps is to determine the point in time when the receiver begins to play as discussed above. It accordingly appears that the Examiner is equating setting the time of the receiver with setting the point in time when the receiver begins to play. However, this is not what is meant in the claim language by setting the time of the apparatus. Setting the time of the apparatus does not mean setting a specific point in time to perform an action, but setting the time or clock of the apparatus that is counted up periodically. There is no disclosure or suggestion the "server start time," the "play start time" and the received time stamps – which are used to determine a specific point in time for commencement of play – are used to set the receiver's system time that is counted up periodically.

The other two references – Shioda and Isozaki – do not make up for the deficiency of Moline. As discussed above, the Examiner believes that Moline discloses setting the time of the receiver based on the received time data by waiting until a specific point in time before playing.

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counted up second time information and the first time information contained in the music data." Independent claims 45 and 46 have similar recitations.

(See, e.g., paragraph 15 and paragraph 4 of the Answer ("Moline waits the said second time until the track is played.").) The Examiner has merely cited Shioda and Isozaki, because Moline does not refer to the subsequent commencement of play as "second" time information. (See, e.g., paragraph 16 of the Examiner's Answer ("Recognize the secondary references where to highlight the nomenclature 'second time information', since Moline does not specifically describe other time information sequentially as 'second.'").) The Examiner does not contend – nor could he – that Shioda or Isozaki disclose setting the time of the apparatus that is periodically counted up based on the time information of the first received music data.

In paragraphs 17 and 18 of the Answer, the Examiner notes that the devices of Shioda and Isozaki disclose setting time so that music is correctly played. Shioda discloses a "delay time" and Isozaki discloses a "start time." However, as discussed above, the claimed setting does not mean setting a specific point in time to perform an action, such as commencement of playing music, but setting the time or clock of the apparatus that is counted up periodically.

Accordingly, Applicant respectfully submits that claims 41-46 are patentable over Moline, Shioda and Isozaki for at least the reason set forth above.

B. The Examiner's Answer fails to establish that the cited references disclose setting the time of an apparatus based only on the time information of the first received music data.

Claim 41 recites that the controlling device "rectifies said first time information by a predetermined value and sets the rectified time information as second time information for the music data processing apparatus when said judging device judges said received music data is the first received data and *does not set the first time information as the second time information when said judging device judges said received music data is not the first received music data.*" (Emphasis added.) That is, once the apparatus rectifies the time information of the first received music data and sets the time of the apparatus, the operation is not performed for subsequently received music data.

As discussed above, Applicant respectfully submits that none of the cited references discloses setting the time of the apparatus based on the first received music data. Accordingly, none of the references discloses refraining from setting the time of the apparatus for subsequently received music data. This is an additional basis for the patentability of claims 41-46.

Applicant furthermore notes that the calculation performed on the received MIDI data in Moline – adding the time stamp of the MIDI data to the "server start time" and comparing it to the "play start time" – is done for *every* received MIDI data until enough track is accumulated.[2] This calculation is not limited to the first received MIDI data. Thus, to the extent that the Examiner contends that Moline's calculation rectifies the time information of the received MIDI data and somehow sets the time of the apparatus (which Applicant challenges), then this operation is performed repeatedly after the first received MIDI data in contrast to the claimed invention.

In paragraph 16 of the Answer, the Examiner notes that the time stamp for each received MIDI data in Moline contains the sum of the elapsed times of all events from the beginning of the track. (See Col. 6, lines 52-55.) Because the beginning of the track begins with the first received MIDI data, the Examiner argues that the time of the apparatus is set based on the time of the first received MIDI data.

This is respectfully irrelevant for the above emphasized claim recitation. This recitation requires not setting the time of the apparatus based on data received after the first received data. In Moline, a calculation is performed on the time stamp of every received MIDI data until enough track is accumulated. It is irrelevant that each time stamp reflects when the track began with the first received MIDI data; what is relevant for the above emphasized claim recitation is that an operation is performed on time stamps of MIDI data receieved after the first received MIDI data.

Because Shioda and Isozaki do not make up for the deficiency of Moline with respect to setting the time of an apparatus based only on the time information of the first received music data,

[2] Note that the calculation of adding the delay parameter to the "server start time" to obtain the "play start time" does not qualify as rectifying the time information as claimed. Claim 41 recites that the rectified time information is the time information of the received *music data*.

Applicant respectfully submits that claims 41-46 are patentable over the cited references for at least this reason as well.

C. Applicant's statements are supported by the claim language.

In paragraph 14 of the Answer, the Examiner states that the Applicant relies on features that are not reflected in the claims. This is respectfully incorrect for each of the three cited features.

First, the Examiner refers to the "elapsed time descriptor" described at page 6, line 11 of the Appeal Brief. This description relates to *Moline* – not the present invention.

Second, the Examiner refers to a phrase "used to set the time of the client or receiver" at page 6, line 19 and page 7, lines 5-6 of the Appeal Brief. These statements were made, because it is believed that the Examiner is comparing the client or receiver of Moline with the music data processing apparatus of the claims. As discussed above, the claims clearly recite the setting of the time of the music data processing apparatus. Claim 41 recites that the controlling device "sets the rectified first time information as the second time information for the music data processing apparatus . . . ." Independent claims 45 and 46 have similar recitations.

Third, the Examiner refers to a phrase "based on time information of the first received data" at page 11, line 5 of the Appeal Brief. There is no such phrase at page 11, line 5.

D. Conclusion

Applicant respectfully submits that claims 41-46 are patentable over the cited references, because they do not disclose setting the time of an apparatus as defined in the claims and setting the time based only on the time information of the first received music data.

It is believed that no fee is due in connection with this Reply Brief. However, in the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension, fee and/or other relief is required, Applicant petitions for any required

relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. 393032003100.

Dated: January 13, 2006

Respectfully submitted,

By_____

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